

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION**

Civil File No.: 4:20-CV-00055-M

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CHURCH MUTUAL INSURANCE  
COMPANY,

Plaintiff,

vs.

**PROTECTIVE ORDER**

LAKE POINTE ASSISTED LIVING,  
INC., TONY BIGLER, EDITH BIGLER,  
LAURA WISE, ADMINISTRATOR OF  
THE ESTATE OF MARTHA A.  
REINERT, BARBARA FOX PARKER  
AND JERRY SINGLETARY,

Defendants.

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This matter came before the Court on Church Mutual's uncontested Motion for Protective Order (ECF No. 82), which sought an order pursuant to Fed. R. Civ. P. 26(c) that confidential information be disclosed only in designated ways.

Based on the motion, and all of the proceedings herein, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**, and confidential information shall be disclosed in only the following ways:

1. As used in the Protective Order, these terms have the following meanings:

“Attorneys” means counsel of record;

“Confidential” documents are documents designated pursuant to paragraph 2;

“Confidential - Attorneys' Eyes Only” documents are the subset of Confidential documents designated pursuant to paragraph 5;

“Documents” are all materials within the scope of Fed. R. Civ. P. 34;

“Written Assurance” means an executed document in the form attached as Exhibit

A.

2. By identifying a document “Confidential”, a party may designate any document, including interrogatory responses, other discovery responses, or transcripts, that it in good faith contends to constitute or contain trade secret or other confidential information of the type set forth in Rule 26(c).

3. All Confidential documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, transfer, disclose, or communicate in any way the contents of the documents to any person other than those specified in paragraph 4. Prohibited purposes include, but are not limited to, use for competitive purposes or in connection with other actions.

4. Access to any Confidential document shall be limited to:

- (a) the Court and its officers;
- (b) Attorneys and their office associates, legal assistants, and stenographic and clerical employees;
- (c) persons shown on the face of the document to have authored or received it;
- (d) court reporters retained to transcribe testimony;
- (e) the parties and their employees;
- (f) outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are

retained by a party or its attorneys to furnish technical or expert services, or to provide assistance as mock jurors or focus group members or the like, and/or to give testimony in this action.

5. The parties shall have the right to further designate Confidential documents or portions of documents as “Confidential - Attorneys’ Eyes Only”. Disclosure of such information shall be limited to the persons designated in paragraphs 4(a), (b), (c), (d), and (f).

6. Third parties producing documents in the course of this action may also designate documents as “Confidential” or “Confidential - Attorneys’ Eyes Only”, subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as “Confidential - Attorneys’ Eyes Only” for a period of 14 days from the date of their production, and during that period any party may designate such documents as “Confidential” or “Confidential - Attorneys’ Eyes Only” pursuant to the terms of the Protective Order.

7. Each person appropriately designated pursuant to paragraph 4(f) to receive Confidential information shall execute a “Written Assurance” in the form attached as Exhibit A. Opposing counsel shall be notified at least 14 days prior to disclosure to any such person who is known to be an employee or agent of, or consultant to, any competitor of the party whose designated documents are sought to be disclosed. Such notice shall provide a reasonable description of the outside independent person to whom disclosure is sought sufficient to permit objection to be made. If a party objects in writing to such

disclosure within 14 days after receipt of notice, no disclosure shall be made until the party seeking disclosure obtains the prior approval of the Court or the objecting party.

8. All depositions or portions of depositions taken in this action that contain trade secret or other confidential information may be designated “Confidential” or “Confidential - Attorneys’ Eyes Only” and thereby obtain the protections accorded other “Confidential” or “Confidential - Attorneys’ Eyes Only” documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within 14 days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as “Confidential - Attorneys’ Eyes Only” during the 14-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses Confidential information shall be taken only in the presence of persons who are qualified to have access to such information.

9. Any party who inadvertently fails to identify documents as “Confidential” or “Confidential - Attorneys’ Eyes Only” shall have 14 days from the discovery of its oversight to correct its failure. Such failure shall be corrected by providing written notice of the error and substituted copies of the inadvertently produced documents. Any party receiving such inadvertently unmarked documents shall make reasonable efforts to retrieve documents distributed to persons not entitled to receive documents with the corrected designation.

10. Any party who inadvertently discloses documents that are privileged or otherwise immune from discovery shall, promptly upon discovery of such inadvertent disclosure, so advise the receiving party and request that the documents be returned. The

receiving party shall return such inadvertently produced documents, including all copies, within 14 days of receiving such a written request. The party returning such inadvertently produced documents may thereafter seek re-production of any such documents pursuant to applicable law.

11. If a party files a document containing Confidential information with the Court, it shall file it under seal. In compliance with the Electronic Case Filing Procedures for the Eastern District of North Carolina:

**G. Filing Sealed and Other Restricted Documents in CM/ECF**

**1. Sealed Documents**

- (a) Except for motions filed under seal in accordance with Section V.G.1.(f), each time a party seeks to file under seal, the party must accompany the request with a motion to seal. The motion to seal may be filed without a supporting memorandum only if the filing party can cite a statute, rule, standing order or court order that requires the filing to be sealed. Absent such authority, the filing party must submit a supporting memorandum that specifies:
  - (i) The exact document or item, or portions thereof, for which the filing under seal is requested;
  - (ii) How such request to seal overcomes the common law or the First Amendment presumption to access;
  - (iii) The specific qualities of the material at issue which justify sealing such material, taking into account the balance of competing interest in access;
  - (iv) The reasons why alternatives to sealing are inadequate; and
  - (iv) Whether there is consent to the motion.

Prior to disclosure at trial or a hearing of materials or information designated "Confidential," the parties may seek further protections against public disclosure from the Court.



12. Any party may request a change in the designation of any information designated "Confidential" and/or "Confidential - Attorneys' Eyes Only" by submitting the request in writing to counsel for the designating party. The request must specify the basis for the challenge with respect to each document challenged. Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to, the designating party may move the Court for appropriate relief within 28 days of the request for change of designation, providing notice to any third party whose designation of produced documents as "Confidential" and/or "Confidential - Attorneys' Eyes Only" in the action may be affected. The party asserting that the material is Confidential shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c). If such motion is timely filed, any document subject to a challenge shall be treated as designated unless and until the Court sustains the challenge. If such motion has not been filed within 28 days of such challenge, the challenged documents shall lose all protections of this Order.

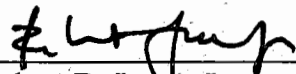
13. Within 60 days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as "Confidential," and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction as within the 60-day period. Attorneys shall be entitled to retain, however, all file materials generated in connection with the action.

14. Any party may apply to the Court for a modification of the Protective Order, and nothing in the Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

15. No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

16. The obligations imposed by the Protective Order shall survive the termination of this action.

Dated: October 19 2022

  
\_\_\_\_\_  
Robert B. Jones, Jr.  
United States Magistrate Judge

**EXHIBIT A**  
**WRITTEN ASSURANCE**

\_\_\_\_\_ declares that:

I reside at \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_. My telephone number is \_\_\_\_\_.

I am currently employed by \_\_\_\_\_, located at \_\_\_\_\_, and my current job title is \_\_\_\_\_.

I have read and I understand the terms of the Protective Order dated \_\_\_\_\_, filed in Case No. 4:20-CV-00055-M, pending in United States District Court for the Eastern District of North Carolina, Eastern Division. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated "Confidential" or "Confidential - Attorneys' Eyes Only" obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in my possession designated "Confidential" or "Confidential - Attorneys' Eyes Only", and all



copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the Eastern District of North Carolina, Eastern Division, for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_

(Date)

(Signature)